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CASES CITED

STATUTES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1924

HIDEMITSU TOYOTA
v.
THE UNITED STATES OF AMERICA } No. 231

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF ON BEHALF OF THE UNITED STATES

STATEMENT OF THE CASE

This proceeding is in form a suit by the United States to cancel a certificate of naturalization previously granted to the appellant Toyota. The facts in the case are simple, and are set forth in the certificate. Toyota is a Japanese subject of Japanese race, born in Japan. He has served in the Coast Guard Service of the United States from 1913 until the present time, with a record which includes several honorable discharges, some of them being for service during the period of the war, when the Coast Guard formed a part of the naval forces. (Act of June 15, 1917, c. 29, 40 Stat. 182, 210, 212; Act of July 1, 1918, c. 114, 40 Stat. 704, 731.) He was naturalized by the United States District

Court for the District of Massachusetts on May 14, 1921. His certificate of naturalization was subsequently cancelled, at the suit of the United States, by the same Court which had granted it. The opinion of the District Court, on cancelling the certificate, is reported in 290 Fed. 971. From the order of cancellation Toyota appealed to the Circuit Court of Appeals for the First Circuit.

That Court has certified two questions of law, which may be paraphrased thus:

Can a person of the Japanese race, born in Japan, be naturalized, by virtue of service as a member of the armed or auxiliary forces of the United States, or as a seaman on an American ship, under either of the following statutes:

Question 1. The Act of June 29, 1906, c. 3592, s. 4, subdivision 7 (34 Stat. 596), as amended by the Act of May 9, 1918, c. 69 (40 Stat. 542)?

Question 2. The Act of July 19, 1919, c. 24 (41 Stat. 163, 222)?

STATUTES INVOLVED

Section 1 of the Naturalization Act of May 9, 1918, c, 69 (40 Stat. 542), added seven new subdivisions to Section 4 of the Naturalization Act of June 29, 1906, c. 3592 (34 Stat. 596). Of these, we are concerned only with the first part of Subdivision 7. This provides (40 Stat. 542):

> Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of

the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; *or any alien,* or any Porto Rican not a citizen of the United States, *of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States,* either the Regular or the Volunteer Forces, or the National Army, the National Guard or Naval Militia of any State, Territory, or the District of Columbia, or the State militia in Federal service, *or in the United States Navy or Marine Corps, or in the United States Coast Guard,* or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance

with the requirements of this subdivision it is shown that such residence can not be established; *any alien serving in the Military or Naval Service of the United States during the time this country is engaged in the present war* may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; * * *. [Italics ours.]

Section 2 of this same Act of May 9, 1918, c. 69, repealed several prior Naturalization Acts and several sections of Title XXX of the Revised Statutes, which is the title dealing with naturalization. Section 2 of this Act of 1918 then provides (40 Stat. 547):

> That all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed; *but nothing in this Act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this Act and under the limitation therein defined* * * *. [Italics ours.]

This Act is hereafter referred to as the Act of 1918.

Section 2169 of the Revised Statutes is found in Title XXX, on Naturalization. It provides:

> The provisions of this Title shall apply to aliens *being free white persons, and to aliens* of African nativity and to persons of African descent. [Italics ours.]

The italicized words in R. S. 2169, it should be noted, were by inadvertence omitted from the original compilation of the Revised Statutes in 1873. They were restored in 1875 by the "Act to correct errors and to supply omissions in the Revised Statutes of the United States." Act of February 18, 1875, c. 80 (18 Stat. 316, 318). *Ozawa* v. *United States*, 260 U. S. 178, 195, cf. *In re Ah Yup* (C. C., D. California, 1878), 5 Sawy. 155.

The Sundry Civil Appropriation Act of July 19, 1919, c. 24 (41 Stat. 163, 222), under the heading "Naturalization Service," provides:

> *Any person of foreign birth who served in the military or naval forces of the United States during the present war,* after final examination and acceptance by the said military or naval authorities, and shall have been honorably discharged after such acceptance and service, shall have the benefits of the seventh subdivision of section 4 of the Act of June 29, 1906, Thirty-fourth Statutes at Large, part 1, page 596, as amended, and shall not be required to pay any fee therefor; and this provision shall continue for the period of one year after all of the American troops are returned to the United States. [Italics ours.]

This Act is hereafter referred to as the Act of 1919.

ARGUMENT

From an examination of the above enactments, it will be seen that this case involves a single point

of statutory construction, namely, the meaning to be given to the words "*any alien*" in the Act of 1918, and to the words "*any person of foreign birth*" in the Act of 1919. It is the contention of the appellant Toyota that these words should be construed to apply to all races and colors without distinction. On behalf of the United States, it is submitted that these words must be construed in the light of Section 2169 of the Revised Statutes, and that no alien, notwithstanding his military or naval service, can be naturalized unless he meets the racial tests therein laid down. If he is not a "free white person or an alien of African nativity" or "a person of African descent," he can not be naturalized; and a judgment admitting him to citizenship is void.

I

From the adoption of the Constitution until the year 1870 the right of naturalization was confined to "free white persons" only. This phrase appears again and again in the Naturalization Acts.

Act of March 26, 1790, c. 3, S. 1 (1 Stat. 103).

Act of January 29, 1795, c. 20, S. 1 (1 Stat. 414).

Act of April 14, 1802, c. 28, S. 1 (2 Stat. 153).

Act of March 26, 1804, c. 47, S. 1 (2 Stat. 292).

Act of March 22, 1816, c. 32, S. 2 (3 Stat. 258).

Act of May 26, 1824, c. 186, S. 1 (4 Stat. 69).

In 1870, as a result of the Civil War, it was enacted: "That the naturalization laws are hereby extended to aliens of African nativity and to per-

sons of African descent." Act of July 14, 1870, c. 254, s. 7 (16 Stat. 254, 256).

From 1873 to 1875, due to the mistake of the compilers of the Revised Statutes, no mention was made of " free white persons "; and it is possible that during this period, and this period only, persons of all races might have been naturalized. In 1875, however, Section 2169 of the Revised Statutes was corrected by the restoration of the phrase " free white persons," and in its corrected form it has remained unaltered until the present. Act of Feb. 18, 1875, c. 80 (18 Stat. 316, 318). There is therefore no room for doubt that Congress has deliberately followed for over a century and a quarter the policy of restricting naturalization to the members of two races only—the white and the African.

United States v. *Bhagat Singh Thind,* 261 U. S. 204.

In re Saito, 62 Feb. 126.

Moreover, this Court has recently held that a person of the Japanese race is not a " white person " within the meaning of the Naturalization Acts.

Ozawa v. *United States,* 260 U. S. 178.

Under the langauge of the statutes and the decision of this Court, and apart from the question of military or naval service, a Japanese can not therefore be naturalized; and a judgment purporting to naturalize him is void upon its face.

Yamashita v. *Hinkle,* 260 U. S. 199.

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II

But it is contended that these considerations do not apply in the case of persons who have served, or who are now serving, in the armed or auxiliary forces of the United States, and that such persons are eligible for naturalization without regard to race or color.

It is submitted that this contention can not be supported, in view of the language and history of the statutes. In the first place, it must be remembered that Section 2169 of the Revised Statutes expressly enacts that—

> "the provisions *of this Title* [Title XXX] shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent."

In Title XXX there is to be found a section (S. 2166) which provides for the speedy naturalization, under certain conditions, of "*any alien,* of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged."

This section 2166 was originally Section 21 of the Act of July 17, 1862, c. 200 (12 Stat. 597), which was the first statute passed to provide special facilities for naturalizing aliens serving under the flag; and so it may be regarded as in a sense the precursor of the Act of 1918.

R. S. 2166, it will be noted, speaks of "*any alien*" serving in the Army. Its language is in this respect similar to that of the Act of 1918. But the scope of R. S. 2166 was limited by R. S. 2169 to aliens of the white and African races only; and it was accordingly held that under R. S. 2166 a Japanese holding an honorable discharge from the United States Army was not eligible for citizenship.

In re Kumagai, 163 Fed. 922.

That case was cited and expressly approved by this Court in *Ozawa* v. *United States,* 260 U. S. 178, 197. It is clear, therefore, that prior to 1918 no alien of any race other than the white or African could become eligible for citizenship by reason of Army service. The purpose of R. S. 2166, as read in the light of R. S. 2169, was merely to provide special facilities for the speedy naturalization of alien soldiers *who were within the eligible classes;* it was not intended to enlarge those classes.

Corresponding provisions for the speedy naturalization of aliens serving in the Navy are also to be found prior to 1918. The Naval Appropriation Act of 1894 (Act of July 26, 1894, c. 165, 28 Stat. 123, 124) dispenses with the necessity for a prior declaration of intention in favor of—

> *any alien* of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five con-

> secutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged. [Italics ours.]

The Naval Appropriation Act of 1914 (Act of June 30, 1914, c. 130, 38 Stat. 392, 395) is more specific. It dispenses with declaration of intention and proof of residence in favor of:

> *any alien,* of the age of twenty-one years and upward, *who may, under existing law, become a citizen of the United States,* who has served or may hereafter serve for one enlistment of not less than four years in the United States Navy or Marine Corps, and who has received therefrom an honorable discharge, or an ordinary discharge, with recommendation for reenlistment, or who has completed four years in the Revenue-Cutter Service and received therefrom an honorable discharge or an ordinary discharge with recommendation for reenlistment, or who has completed four years of honorable service in the naval auxiliary service. [Italics ours.]

These Acts of 1894 and 1914 remained in force until repealed by section 2 of the Act of 1918.

Under both the Act of 1894 and the Act of 1914 it was repeatedly held that the provisions of R. S. 2169 were still controlling on the question of race, that the classes of person eligible to naturalization had not been increased, and that persons of Asiatic

race, including Filipinos, could not attain citizenship through naval service.

In re Knight, 171 Fed. 299.

Bessho v. *United States* (C. C. A.) 178 Fed. 245.

In re Alverto, 198 Fed. 688.

In re Lampitoe, 232 Fed. 382.

In re Rallos, 241 Fed. 686.

III

Prior to 1918, then, the appellant could not have attained citizenship by reason of either military or naval service—and these terms include such auxiliary service as the Coast Guard, which was specially named, together with the Navy and Marine Corps, in the Act of 1914. (*supra,* page 10.)

Has the Act of 1918 wrought any change in the law, so as to render the appellant now eligible, when he was not eligible before?

The Act of 1918 specifically provides (*supra,* page 4) that:

> Nothing in this act shall repeal *or in any way enlarge* section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this Act and under the limitation therein defined.

The seventh subdivision, here mentioned, is the one to which reference has already been made, and which is quoted *supra,* page 2.

The appellant contends that the result of this Act is to abolish all racial distinctions in the case of aliens in military or naval service, and thereby to overturn what has been the settled policy of Congress since 1790 with regard to aliens in general, and since 1862 with regard to aliens serving in the forces of the United States.

It is submitted that such a result was not intended by the framers of the Act and can not be supported by its language.

The point now at issue involves the meaning of the words above quoted: *"except as specified in the seventh subdivision of this Act and under the limitation therein defined."* It is the contention of the appellant that these words must be taken to cover all the classes of aliens mentioned in the seventh subdivision, and that with respect to all those classes all racial barriers are abolished.

Such is not the meaning which has been placed upon these words by the lower Federal courts. Those courts have pointed out that the intention of Congress was not to "let down the bars" or to admit to citizenship any classes which were previously ineligible, with a single exception. That exception was in favor of Filipinos. They had previously been held ineligible for citizenship, as being of the brown race.

In re Alverto, 198 Fed. 688.
In re Lampitoe, 232 Fed. 382.
In re Rallos, 241 Fed. 686.

It is true that in some cases decisions had been rendered in favor of naturalizing Filipinos.

In re Bautista, 245 Fed. 765.
In re Mallari, 239 Fed. 416.

But the preponderance of opinion was against their eligibility; or, at least, the question remained open to much doubt. To resolve this doubt in favor of Filipinos who had served in the Navy, Congress inserted the seventh subdivision of the Act (*supra*, p. 2) dealing with such cases. There was a special reason for this. The Filipinos occupy a status somewhat different from ordinary aliens; they already owe allegiance, in some sense, to the United States; and it was this fact which led Congress to grant them a special favor not extended to other Orientals. But except in the case of Filipinos (and possibly Porto Ricans) the racial requirements of R. S. 2169 were to remain unimpaired. Asiatics who had formerly been ineligible were to remain so. The intention of Congress was merely to hasten the processes of naturalization in favor of persons in the service. The Act, in other words, was intended merely to relax the rules of *procedure*. It was not intended (save in the case of Filipinos serving in the Navy) to widen the rules of *eligibility*. The words "*except as specified in the seventh subdivision of this Act and under the limitation therein defined*" must be taken as referring only to the case of Filipinos (and possibly to Porto Ricans also) and not to the other aliens

mentioned in that subdivision; for as to those other aliens the existing racial standards were to continue.

We have, then, to consider the meaning of the language last quoted. What are the specifications referred to in the seventh subdivision, and what is the limitation therein defined? As has been said, the only reference to race contained in that section was as to Filipinos and Porto Ricans. For this reason, it may well have been deemed necessary, or at least expedient, to reaffirm the binding force and effect of section 2169. It has already been shown that Filipinos, in certain cases, have been adjudged inadmissible to citizenship because of racial disqualification. Some citizens of Porto Rico may be conceived to present similar disabilities. Congress, in passing this law, must be presumed to have acted with knowledge of all previous legislation and of its interpretation by the courts. The exceptions referred to must have been the races especially mentioned in the seventh subdivision, and the limitation was the military or naval service performed. In other words, under the general law, neither a Filipino nor a Porto Rican could necessarily have been admitted to citizenship. Under this subdivision he may be, irrespective of race, if he has performed the service specified.

Petition of Easurk Emsen Charr, 273 Fed. 207, 212.

Cf. *In re En Sk Song; In re Mascarenàs,* 271 Fed. 23, 26.

IV

But if any doubt exists as to the construction of the words in question, it is dispelled, and the correctness of the theory expressed in the *Charr* and *Mascarenas* cases (*supra*) is fully sustained, by reference to the committee reports. It is admitted that such reports should not be used to create doubts, but only to dispel them, and that the expressions of individual members of Congress may not be resorted to. Nevertheless, it is submitted that in the present case the committee reports, as well as statements in the nature of supplemental reports made by committee members upon the floor of the House, may properly be consulted to ascertain the true intention of the legislative body.

> *Duplex Printing Co.* v. *Deering,* 254 U. S. 443, 474.

The Naturalization Act of 1918 (act of May 9, 1918, c. 69, 40 Stat. 542) was H. R. 3132, Sixty-fifth Congress, second session.

The report of the Senate committee sheds some light on the points now under consideration (Senate Report No. 388; 65th Congress, 2nd session, Senate Reports, vol. 1).

At page 2 of the report:

> The amendatory matter recommended by this committee in lieu of bill H. R. 3132 will be found commencing with subdivision seventh. Subdivision seventh enlarges the scope of the naturalization laws by extending to those native-born Filipinos who are

not citizens of the United States and who have enlisted or may hereafter enlist in the United States Navy, Marine Corps, and auxiliary vessels of the Navy, the privilege of securing American citizenship after honorable service and discharges showing such service. This provision has been inserted in deference to the desires expressed by the Secretary of the Navy. Subdivision seventh also embraces within it all of the classes of aliens who are exempted from the general provisions of the naturalization laws by reason of their inability to acquire a domicile in any State or Territory of the United States. They are aliens who have enlisted and have been honorably discharged from the military and naval services of the United States Government, from the Philippine Constabulary, and from military service in the Panama Canal Zone. It also includes those aliens who have had military training in the National Guard or Naval Militia of any State, Territory, or District, any alien serving in the military or naval service of the United States, or any alien declarant who has been accepted conditionally in the military or naval service of the United States. * * *

At page 3:

* * * This subdivision also provides for the naturalization of all the American

soldiers of foreign birth now in the military service of the United States. * * *

At page 8:

> * * * Section 2 contains the quoted portions of the sections of the Revised Statutes that are repealed. It also contains the general repealing clause and safeguards the prosecutions of crimes for offenses against the naturalization laws of the United States. *It also declares that nothing in the act shall enlarge or repeal in any way section 2169 of the Revised Statutes except as specified in the seventh subdivision and under the limitation therein defined. This means that Filipinos may be naturalized who are enlisted in the Army or Navy of the United States and are honorably discharged therefrom.* [Italics ours.]

To the same effect is the House Report accompanying H. R. 11518, which was incorporated in H. R. 3132, and forms, with H. R. 3132, the final Act. (For the union of the two measures see Congressional Record, vol. 56, part 6, page 6022. 65th Congress, 2nd session.)

The report just mentionel is House Report No. 502, 65th Congress, 2nd session, House Reports, vol. 1.

At page 1 of the report:

> The seventh subdivision has been prepared for the purpose of unifying the rule of exemptions extended to certain aliens who have received military training in the armies of

> the United States and the Philippine Islands, as well as those serving on vessels of the United States Government and the American merchant marine. *It also makes the first enlargement ever authorized of the provisions of Section 2169 by allowing Filipinos* who have served in the United States Navy or Marine Corps or the Naval Auxiliary Service, and have been honorably discharged therefrom after the term of enlistment specified, to petition for naturalization under the conditions and limitations as defined in the seventh subdivision, and includes all those who are at present in the military service of the United States, whether they have declared their intention or not. [Italics ours.]

At page 4:

> In the general repealing portion of this section the provision as to the effect of this act upon Section 2169 of the Revised Statutes *is clearly shown not to enlarge it in any way except as to the Filipino,* and only in those cases of Filipinos who have performed the service in the Navy as defined in subdivision 7. [Italics ours.]

The purpose of Congress not to enlarge R. S. 2169 is made still more clear by reference to the explanatory statements made on the floor of the House by Mr. Burnett, Mr. Johnson, and Mr. Hayes (House managers in the Conference Committee which sat on the bill when the Senate and House

disagreed), who were in charge of the bill when it was reported back from conference.

Congressional Record, vol. 56, part 6, page 6000, in a debate on subdivision 7 of the Act:

Mr. MOORE of Pennsylvania. How would that apply in the case of a Chinaman or a Japanese? The term "any alien" there is pretty broad. It applies to a Filipino in the service. Is it possible it would apply also to a Chinaman or a Jap?

Mr. BURNETT. This does not repeal the existing law which excludes Chinese and Japanese from citizenship.

The law reads:

"That hereafter no State court or court of the United States shall admit Chinese to citizenship, and all laws in conflict with this act are hereby repealed."

Mr. JOHNSON of Washington. Further, it is to persons who have applied for citizenship. It is not under present laws as to those outside of this country.

Mr. MOORE of Pennsylvania. Would it be possible to obtain a foothold in the Army and make that the medium of becoming a citizen under this section?

Mr. HAYES. Mr. Speaker, I would like to suggest to the gentleman that the purpose of this, of course, is to admit Porto Ricans and Filipinos who are in the Army to apply for commissions in order to have an official position in the various Filipino and Porto Rican

contingents of the Army. That is the primary purpose of it.

Mr. BURNETT. It would not apply to those who are not capable of acquiring citizenship.

* * * * *

Again, at page 6000:

Mr. MOORE of Pennsylvania. Will the gentleman permit me to call his attention to that section beginning on top of page 3 of the original bill, as follows—

"Any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States"—

and then recur to the question? I do not want to embarrass the gentleman, but he may have thought it out. I want to know if under that broad provision applying to "any aliens" it may not apply to Japanese and Chinese who may be engaged somewhere in the Navy or the Army? Surely there are some on the ships and at Army posts.

Mr. BURNETT. If the gentleman will refer to page 16, he will find:

"Nothing in this act shall repeal or in any way enlarge section 2169 of the Revised Statutes, except as specified in the seventh subdivision of this act, and under the limitation therein defined."

Now, that section excludes them from naturalization.

Mr. MOORE of Pennsylvania. The gentleman has caught up with the question I am raising.

Mr. BURNETT. That was all discussed in our committee and in the conference committee.

Mr. MOORE of Pennsylvania. The language on page 3 of the original bill is so broad that I thought it proper to ask the question.

Mr. BURNETT. With that limitation I think it is all right.

* * * * *

At page 6001:

Mr. MEEKER. Then, we understand that it is the opinion of the chairman of the committee that this particular thing should be so construed that if a Filipino, or anyone who has been discharged during the Spanish-American War or since, and has lived a year in the United States at any time, is therefore under the law entitled to citizenship?

Mr. BURNETT. Not the Filipino.

Mr. MEEKER. I mean those men who have served under the United States forces?

Mr. BURNETT. Yes; *those who are entitled to naturalization; but an Asiatic could not be.* Any other alien who under the general naturalization laws was entitled to naturalization would be, under this general law, according to the construction that the bureau

has given it and that the Department of Justice has given it. He would be entitled to naturalization. [Italics ours.]

Again at page 6003:

Mr. NORTON. Mr. Speaker, I understood the gentleman from Alabama [Mr. Burnett], in making the explanation to the gentleman from Pennsylvania, to say that in paragraph 10, on page 16, line 21, the reference to section 2169 of the Revised Statutes would exclude the inclusion of Chinese and Japanese in the term "any alien serving in the military or naval service of the United States" as used on page 3, line 20. The gentleman from Pennsylvania called the attention of the gentleman from Alabama to the fact that the expression "any alien serving in the military or naval service of the United States" might include Chinese or Japanese as that term "any alien" is used on page 3, line 20. May I ask the gentleman from Alabama [Mr. Burnett] how is that safeguarded against? As I understood the gentleman from Alabama, he said it was safeguarded by the provision on page 16, beginning at line 18 and extending to line 23, which is as follows:

"That all acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed; but nothing in this act shall repeal or in any way enlarge sec-

tion 2169 of the Revised Statutes, except as specified in the seventh subdivision of this act and under the limitation therein defined."

Mr. BURNETT. Section 2169 is a declaration as to who shall be entitled to naturalization—that is, that white persons and aliens of African nativity and persons of African descent; and, in not repealing that, and specifically stating it does not repeal that, it constitutes a limitation upon the scope of this law so far as the naturalization of Chinese or Japanese is concerned.

Mr. NORTON. The gentleman's interpretation of section 2169 is that it "excludes from the naturalization laws Japanese and Chinese"?

Mr. BURNETT. Yes; that has been the construction of the courts.

Mr. NORTON. Section 2169 reads as follows:

"The provisions of this title shall apply to aliens [being free white persons and to aliens] of African nativity and persons of African descent."

Mr. BURNETT. Yes.

Mr. NORTON. Is the effect of that to exclude those of the brown race?

Mr. BURNETT. Yes.

Mr. NORTON. That is the interpretation that has been placed upon it?

Mr. BURNETT. Yes; that is the interpretation given by the courts. The inclusion

of the one is the exclusion of the other. It is a limitation on those entitled to naturalization.

Mr. MOORE of Pennsylvania. Have the courts so interpreted section 2169?

Mr. BURNETT. Yes.

Mr. MOORE of Pennsylvania. As applying to Asiatics as well as Africans, because it mentions only Africans?

Mr. BURNETT. It only states who may be naturalized, and in stating who may be naturalized, by virtue of that very fact, it excludes those not embraced within its terms, and therefore they can not be naturalized.

Mr. NORTON. The words "being free white persons" are included within brackets and then come the words, "and to aliens of African nativity and persons of African descent." That excludes the brown race?

Mr. BURNETT. That is the interpretation of the courts, and I think it is a very reasonable one.

Mr. NORTON. In reading the section that interpretation of it was not clear to me and that is the reason I made the inquiry.

Mr. BURNETT. Yes; it is an important question, and I am glad the gentleman asked it.

It is therefore clear that Congress, in enacting this legislation, was very far from intending to enlarge the scope of the naturalization laws to take in persons of races hitherto excluded. An exception was made only in the case of the Filipinos. But beyond that Congress did not intend to go.

The repealing clause of the Act expressly provides that the racial restrictions imposed by R. S. 2169 shall continue "except as specified in the seventh subdivision of the Act and under the limitation therein defined." This "limitation," as the committee report clearly shows, applies to the case of the Filipinos only. The words "any alien" in subdivision 7 must bear their historical definition, and must be considered as being limited by R. S. 2169 to aliens of the white and African races only.

V

But the appellant, if defeated under the Act of 1918, seeks to rest his case on the provisions of the Act of July 19, 1919, c. 24 (41 Stat. 163, 222), quoted *supra*, page 5.

The same arguments which have already been directed to the Act of 1918 will also apply to this Act. The words "*any person of foreign birth*" in the Act of 1919 must be considered as equivalent to the words "*any alien*" in the Act of 1918. Both alike must be construed in the light of R. S. 2169. Congress, in 1918, very plainly manifested its intention not to relax the racial tests for citizenship, even in favor of persons in the military or naval service; and it can not be assumed, in the absence of very clear language to the contrary, that the intention of Congress, during one year, underwent a complete change. The purpose of the Act of 1919 is plain; it is merely an extension of the privileges of the Act of 1918 to soldiers and sailors (of eligible races, it must be understood) *after their dis-*

charge, with an added provision that no fees shall be required, and with an extension of its benefits "for the period of one year after all the American troops are returned to the United States."

VI

The purpose of the two Acts is identical; it is merely to provide, for the benefit of alien soldiers and sailors, a more speedy means of approach to citizenship by the relaxation of the ordinary requirements as to declaration of intention, proof of residence, and the payment of fees. Like the Act of June 29, 1906, c. 3592 (34 Stat. 596), which they amended, the purpose of the Acts of 1918 and 1919 is chiefly procedural. *Ozawa* v. *United States*, 260 U. S. 178, 191. In neither Act can there be found any basis for the contention that Congress intended to depart from the traditional policy of this country with regard to the admission of the Oriental races to citizenship. And the lower Federal courts have uniformly treated the Acts of 1918 and 1919 as applicable only to persons of the white and African races and to Filipinos. It is in favor of the latter only that the racial qualifications have been relaxed; and other Orientals, notwithstanding military or naval service, have been held ineligible for citizenship under both the Acts of 1918 and 1919.

In re Para; *In re Narasaki*, 269 Fed. 643.
In re En Sk Song; *In re Mascarenas*, 271 Fed. 23.

Petition of Kasurk Emsen Charr, 273 Fed. 207.

Petition of Dong Chong, 287 Feb. 546.

The case of *Kasurk Emsen Charr* (*supra*) was cited and expressly approved by this court in *Ozawa* v. *United States*, 260 U. S. 178, 197. Charr was a Korean, a subject of the Mikado of Japan; his petition for citizenship was based upon military service, and he relied, in his application, on both the Acts of 1918 and 1919. But the Court held that neither the Naturalization Act of 1906 (Act of June 29, 1906, c. 3592, 34 Stat. 596), nor the later Acts of 1918 and 1919 had in any way repealed or extended the racial tests laid down by R. S. 2169, and that, inasmuch as Charr was neither a free white person nor an African, his petition must be denied. In *Ozawa* v. *United States* (*supra*), after citing *Charr's case* and others, this Court said:

> With the conclusions reached in these several decisions we see no reason to differ. [260 U. S. 178, 197.]

The facts of *Charr's case* are exactly parallel to those of the case at bar; and it is submitted that the decision in *Charr's case* is correct.

VII

It is submitted that the language of the statutes, even when considered by itself, can not reasonably be made to bear the interpretation which the appellant seeks to place upon it. When considered in the light of history, of decided cases, and of the

surrounding circumstances, that language is rendered free from all doubt. The intention of Congress to erect, and to maintain unaltered, certain racial distinctions, is clear and unambiguous, and has undergone no change since 1918. Those racial distinctions are applicable alike to civilians and to persons now or formerly members of the armed forces of the nation.

It is therefore respectfully submitted that both of the questions certified should be answered in the negative.

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MARCH, 1925.

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